IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 153 of 2006
In
COMPANY APPLICATION No. 348 of 2006
With
COMPANY PETITION No. 154 of 2006
In COMPANY APPLICATION No. 349 of 2006
With
COMPANY PETITION No. 155 of 2006
In COMPANY APPLICATION No. 350 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADANI CHEMICALS LTD.& Others - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 24/11/2006

ORAL JUDGMENT

All these Company Petitions are filed by 3 petitioner companies for sanction of Scheme of Amalgamation of Adani Chemicals Limited and Mundra Special Economic Zone Limited [both Transferor Companies] with Mundra Port and Special Economic Zone Limited [erstwhile Gujarat Adani Port Limited], [the Transferee Company] under Section 391 read with Section 394 of the Companies Act, 1956.

1.1. Adani Chemicals Ltd [one of the Transferor Companies) is the applicant of Company Petition No. 153 of 2006. Mundra Special Economic Zone Limited [one of the Transferor Companies] is the applicant of Company Application No. 154 of 2006. Mundra Port and Special Economic Zone Ltd [Transferee Company] has preferred Company Petition No. 155 of 2006.

2. It has been submitted that both the Transferor Companies are the wholly owned

subsidiaries of the Transferee Company which is a Public Limited Company. It is submitted that the Transferee Company was promoted as a Joint Sector Company by Government of Gujarat (GPIDCL) and Adani Group. The company is promoted to undertake the development of Mundra Port at Navinal Island, near village Mundra in the Kutch District. It is averred in the petition that it has been granted “Concession Rights” for the Mundra Port. Prime activities of the company involve development of Port Back up facilities in terms of storages and cargo handling equipments for the dry bulk and liquid bulk cargo at the Mundra Port. It is submitted that MPSEZL [Transferee Company] has received approval for setting up Multi-product Special Economic Zone at Mundra in terms of Special Economic Zone Act, 2005 and Rules made thereunder.

3. It is submitted that the amalgamation is proposed for the synergic advantages as the

objects of these companies are interrelated. The benefits of amalgamation that will accrue to all the entities, as envisaged by the management of these Companies are mentioned and narrated in Paragraph 7.5. It is further submitted that the activities, affairs and transactions of the Transferor Companies and the Transferee Company are managed by the respective Board of Directors and respective Board of Directors of both the Companies have approved the Scheme of Amalgamation and the assets of both the combined units after amalgamation will be enough and sufficient to meet all the liabilities and proposed amalgamation will not adversely affect the creditors or class of creditors and will enable them to realise their dues in a normal manner.

4. The proposed Scheme of Amalgamation was approved by the shareholders and unsecured creditors of the Transferor Company, i.e., Adani

Chemicals Ltd., and there being no secured creditor the meeting of the shareholders and secured creditors were dispensed with by this Court vide order dated 10th July 2006 passed in Company Application No. 348 of 2006. It is further submitted that Mundra Special Economic Zone Ltd [one of the Transferor Companies] and the petitioner of Company Petition No. 154 of 2006 was the sole Unsecured Creditor of Adani Chemicals Ltd and its consent was given and therefore pursuant to the aforesaid order the meeting of the Unsecured Creditor was also dispensed with.

5. So far as Mundra Special Economic Zone Limited [Transferor Company] is concerned, having obtained approval of the proposed Scheme of Amalgamation of the shareholders and the same was presented before this Court in Company Application No. 349 of 2006, the learned Single Judge of this Court by order dated 10th July 2006

dispensed with the meeting of the shareholders. It is reported that the meeting of Unsecured Creditors of the said Company was called/convened pursuant to the order dated 10th July 2006 passed in Company Application No. 349 of 2006 and Chairman has submitted a Report of the said meeting [Page 40]. The result of the said meeting has been narrated in Para 15 [Page 13] reporting that all the Unsecured Creditors have unanimously approved the proposed Scheme of Amalgamation.

6. So far as the Transferor Companies are concerned, both the Company Petitions No. 153 of 2006 and 154 of 2006 came to be admitted by this Court and the admission and final hearing were advertised in two local newspapers, i.e. “Loksatta-Jansatta” and “Indian Express” [both Ahmedabad Editions] on 9.9.2006 and the affidavit of publication of the said advertisement dated 26.9.2006 is on record.

7. The Official Liquidator has filed Report in the respective Company Petitions dated 25.9.2006 and has confirmed that affairs of the Company have not been conducted in a manner prejudicial to the interests of their members or to the public interests.

8. So far as Company Petition No. 155 of 2006 filed by the Transferee Company, Mundra Port and Special Economic Zone Ltd., is concerned, the meetings of the equity shareholders and preference shareholders were convened pursuant to the order passed by this Court dated 10th July 2006 in Company Application No. 356 of 2006 and the Chairman's Report of the said meetings is on record [Page 45]. So far as the result of the said meeting qua equity shareholders is concerned, the same has been narrated in Para 14 and 14(i) of the petition. So far as the result meeting of the preference shareholders is concerned, the same has been narrated and

mentioned in para 15 and 15(i) of the petition. It has been submitted that both equity shareholders as well as preference shareholders have unanimously approved the Scheme of Amalgamation.

9. Notices of all the Company Petitions have been served upon the Central Government and Shri PJ Malkan, learned Central Government Standing Counsel appears for the Central Government in all the Company Petitions. An affidavit dated 20th September 2006 is filed by the Assistant Registrar of Companies and has put on record the letter from the office of the Regional Director, Western Region dated 28th September 2006 indicating that the Central Government had decided not to oppose the said Company Petitions.

10. I have heard Mrs. Swati Soparkar, learned advocate appearing for the petitioning companies. I have also heard Shri PJ Malkan, learned Central

Government Standing Counsel appearing for the Central Government.

11. Considering the averments made in the Company Petitions, Report of the Official Liquidator, as well as the letter addressed by the Regional Director, Mumbai, and considering the proposed Scheme of Amalgamation, and considering the fact that the proposed Scheme of Amalgamation has been approved by all concerned, and it also appears to the Court that the amalgamation would be in the interests of the companies, their shareholders and creditors, the prayers in terms of Paragraph 15(a) of Company Petition No. 153 of 2006 and 21(a) of the Company Petition No. 154 of 2006 and 21(a) of Company Petition No. 155 of 2006 are hereby granted.

12. All these petitions are accordingly disposed of. So far as costs to be paid to the learned Additional Central Government Standing

Counsel, the same is quantified at Rs. 3500 per petition and the same may be paid to Shri Malkan, learned Central Government Standing Counsel by the respective petitioners.

[M.R. Shah, J.]

RMR.